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IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1982

6194  
No. 82-6194

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SUPREME COURT, U.S.

H. WESLEY COPELAND, Petitioner,  
versus  
STATE OF SOUTH CAROLINA, Respondent.

BRIEF IN OPPOSITION TO PETITION FOR  
WRIT OF CERTIORARI

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ATTORNEYS FOR RESPONDENT.

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES THAT A  
TRUE COPY OF Brief in Opposition  
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DAY OF March, 1983  
ATTORNEY for Respondent  
SWORN TO BE-ORE ME THIS 22<sup>nd</sup> DAY  
OF March, 1983  
Marie J. Wilson a.s.  
Notary Public for South Carolina  
My Commission Expires 5/26/86

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## QUESTIONS PRESENTED

### I.

Did the trial court properly dismiss the subject potential juror for cause?

### II.

Was the jury in the sentencing phase of this trial given proper and complete instructions regarding its consideration of mitigating circumstances?

CASES INVOLVED

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CASES INVOLVED

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V. WILSON WILSON, Defendant

vs.

STATE OF MISSISSIPPI

WILSON IS DEFENDING HIS RIGHTS FOR  
WHICH HE REQUESTS

WILSON WILSON

The opinion of the State of Mississippi is  
reported in Opinion No. 21808, filed November 10, 1982, as  
reproduced in Appendix A.

JURISDICTION

Respondent does not question the State's jurisdiction  
in this proceeding.

QUESTIONS PRESENTED

Did the trial court properly consider the subject  
potential issue for appeal?

II.

Was the jury in the sentencing phase of this trial  
given proper and complete instructions regarding its  
consideration of mitigating circumstances?

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OPINION BELOW

The opinion of the South Carolina Supreme Court is reported in Opinion No. 21808, filed November 10, 1982, as reproduced in Petitioner's Appendix A.

JURISDICTION

Respondent does not question the Court's jurisdiction in this proceeding.

QUESTIONS PRESENTED

I.

Did the trial court properly dismiss the subject potential juror for cause?

II.

Was the jury in the sentencing phase of this trial given proper and complete instructions regarding its consideration of mitigating circumstances?

## ARGUMENT

### I.

The trial court properly dismissed the subject potential juror for cause.

Petitioner states that, "this case presents the issue of whether or not the State courts may exclude from jury service in capital cases potential jurors who have general reservations about the imposition of the death penalty." Respondent respectfully submits that no such issue is presented to this Court since, in fact, the disqualified potential juror under review clearly demonstrated his unwillingness to vote for the death penalty. On this issue, the South Carolina Supreme Court stated:

Next, Appellants argue the trial court erred in disqualifying Anthony Gadsden, a member of the venire, because of his strong feelings against the death penalty where the record did not show he was irrevocably committed to vote against imposition of the death penalty. The questioning process of Mr. Gadsden, viewed in its entirety, clearly demonstrates his unwillingness to vote for the death penalty. The questioning process was consistent with the standards established in Witherspoon v. Illinois, 281 U.S. 510 (1968). Thus, the trial court did not err in disqualifying Mr. Gadsden for cause. State v. Copeland and Roberts, Op. No. 21808 (filed November 10, 1982).

In his Petition, Petitioner has presented this Court only with segments of the voir dire examination of juror Gadsden. The South Carolina Supreme Court, on the other hand, has reviewed the entire voir dire examination and has found, as a matter of fact, that the potential juror had sufficiently demonstrated his unwillingness to be fair and impartial and to consider the alternative of a death



sentence. Respondent respectfully submits that Petitioner's assumption in his representations to this Court that a question still remains as to this factual conclusion ignores the clear factual finding to the contrary by the trial court and the South Carolina Supreme Court and is therefore patently without merit.

## II.

The jury in the sentencing phase of this trial was given proper and complete instructions regarding its consideration of mitigating circumstances.

Petitioner states that, "this case presents the issue of whether or not the Eighth and Fourteenth Amendments are violated when the jury in a capital case is insufficiently instructed as to the state of the law concerning what evidence may properly be considered as mitigation in the decision between a life sentence and the imposition of a death sentence." Again, Respondent respectfully submits that no such issue is presented in light of the record and the opinion of the South Carolina Supreme Court. That opinion states in relevant part:

Appellants next argue the trial judge's charge and written statutory instructions concerning mitigating circumstances were insufficient to alert the jurors that they could consider mitigating circumstances other than the nine statutory mitigating circumstances.

Section 16-3-20(c) of the Code requires the trial judge to instruct the jury to consider "any mitigating circumstances otherwise authorized or allowed by law and any...statutory...mitigating circumstances...." The trial judge



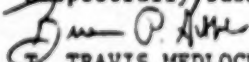
fully complied with this provision. This exception is without merit.

Respondent respectfully submits that, while Petitioner contends otherwise, the record and the South Carolina Supreme Court have properly resolved this issue adversely to his position. Hence, this Petition should be dismissed.

#### CONCLUSION

For the foregoing reasons, Respondent submits that Petitioner's Petition for a Writ of Certiorari be denied.

Respectfully submitted,

  
T. TRAVIS MEDLOCK  
Attorney General

HAROLD M. COOMBS, JR.  
Assistant Attorney General

BRIAN P. GIBBES  
Senior Assistant Attorney General

ATTORNEYS FOR RESPONDENT.